

<b>Meeting Date:</b>  <b>May 18, 2021</b>	<b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</b>  <b>VIRTUAL AD HOC COMMITTEE TO REVIEW THE PILOTAGE RATE SETTING PROCESS MEETING MINUTES</b>	<b>Page 1 of 6</b>
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#### **Committee Members Present**

Captain Robert Carr, Committee Chair  
 Captain Oscar Prada, Commissioner  
 Karen Tynan, Commissioner

#### **Committee Members Absent**

None.

#### **Board Staff Present**

Allen Garfinkle, Executive Director  
 Dennis Eagan, Board Counsel  
 Brenda Pugh, Staff Services Manager I  
 Alethea Wong, Administrative Assistant II

#### **Identified Public Present**

Captain John Carlier, San Francisco Bar Pilots (SFBP) President and Port Agent; Captain Anne McIntyre, SFBP Business Director; Captains Michael Rubino, Matt Lingo, and Eric Robinson, SFBP; Captain Einar Nyborg, Commissioner Jennifer Ferrera Schmid, Board Vice President; Mike Jacob, Pacific Merchant Shipping Association (PMSA) Vice President and General Counsel; and Captain Amanda Wallace, Chevron Shipping.

#### **OPEN MEETING AGENDA**

##### **1. Call to Order and Roll Call. (Chair Carr)**

Committee Chair Carr called the meeting to order at 9:30 a.m. Administrative Assistant II Wong called the roll and confirmed a quorum.

##### **2. Review and approval of the minutes for the Ad Hoc Committee to Review the Pilotage Rate Setting Process meeting held on April 8, 2021. (Chair Carr)**

The Committee members were presented with the draft minutes from the meeting held on April 8, 2021. There was no discussion.

**MOTION:** Commissioner Prada moved to approve the draft minutes of the meeting held on April 8, 2021. Commissioner Tynan seconded the motion.

**VOTE:** YES: Carr, Prada, and Tynan.

NO: None.

ABSTAIN: None.

**ACTION:** The motion was approved.

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**3. Public comment on matters on the agenda or not on the agenda.**

There were no public comments.

**4. Continued discussion of the history of the pilotage rate setting process at the Board, and rate setting processes at other pilotage jurisdictions as compared to the Board's current pilotage rate setting statutes. (Chair Carr)**

SFBP Business Director Captain McIntyre presented SFBP's concerns with the current rate setting process and the last time the Legislature acted on a rate recommendation from the Board was in 2002. The Board conducted extensive rate hearings in 2011 and in 2015. The recommendations were carried to the Legislature for enactment into law, but the recommendations were not adopted. She also reported preparation for, and presentation at the rate hearings, used a substantial amount of resources. She noted that other stakeholder's costs were most likely comparable to SFBP's, who spent over \$200,000 for legal and consulting fees for a single hearing. She also added that, although the final recommendations were based on evidence presented, having the recommendations brought to the Legislature for approval subjects them to political influence, which has lead to no resolutions. When the pandemic resulted in pilot revenue decline, SFBP wanted the Board the ability to act quickly, but this is not possible with the current process. The current process, being subject to the legislative calendar, but takes too long to reach a resolution. She responded to Commissioner Prada that the previous recommendations were requests to change the mill rate.

Executive Director Garfinkle reported that after the last round of rate hearings in the late nineteen eighties, the stakeholders resolved to have an Administrative Law Judge conduct the rate hearings, which was the process from 1991 – 1995. Having an Administrative Law Judge will be more efficient. During those hearings, there was a target pilot income agreed to, and much discussion about what were properly allowed expenses.

SFBP Business Director Captain McIntyre responded to Commissioner Tynan that SFBP wants the Board to remain active in the rate hearing process and it would be helpful if there's someone who is familiar with the process. She also noted that the pilotage system should be considered as a part of the state's infrastructure, and that when setting rates, it's important to consider what providing a pilotage system costs. She also noted the following suggestions that may improve the current system and benefit all parties:

- A single step process under the Board's jurisdiction that can be completed in a reasonable time frame. The Legislature should be removed from the rate-making process.
- Rate hearings should be based on evidence - incorporate an Administrative Law Judge, and follow the Administrative Procedures Act.

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- The process should be responsive to changing economic conditions and system fiscal requirements and procedurally should not rely on a limited legislature calendar. Predictability of rate and revenue should be considered.
- The process should be more formulaic, and data driven. Automatic adjusters may be considered.
- The process should equitably allocate rates across all rate payers and consider the interests of the people of California, the pilots, and the rate payers.
- The process should promote a simplified tariff structure that is easily auditable.
- Encouraging the cooperation of all parties with less litigation could minimize costs.
- Discourage the use of media and political contributions to advocate or influence outcomes.

Commissioner Nyborg commented that he was concerned that pilots and PMSA are bringing the recommendations to the Legislature instead of the regulating agency.

SFBP Business Director Captain McIntyre responded to Committee Chair Carr that having an Administrative Law Judge should be incorporated in the rate hearing process, one that is skilled and qualified to make decisions on the validity of evidence presented. She noted that it will be helpful to have a transparent and public process. She reported that the Legislature provided feedback to parties previously, that they are not experts and are unsure why they need to be involved with a local rate setting process.

Mr. Jacob reported that PMSA agrees with most of SFBP's concerns and that he is interested in continuing discussions with the Committee. He noted that from past experiences and feedback from members that there is no single best system for pilotage rate setting, but there are multiple systems that work well to set sufficient and fair rates for pilots and rate payers. He noted that PMSA endorses pilotage rate setting processes that are objective, evidence-based, independent, transparent, administratively and/or judicially accountable, and free of conflicts of interest. PMSA also strives for a fair and objective system. He noted that rate setting that involves the Board, is from his perspective, not transparent or evidence-based, therefore he suggests that the Board focus on pilot training, licensing, and discipline. Prior to the Committee moving forward in addressing rate setting issues, he requests that the Committee first identify and adopt goals. He noted that PMSA has also heard from the legislators to minimize their involvement, as it puts the legislators in an awkward position. He suggested that a third-party member completing a rate setting report may be a possible solution. He reported that rate setting changes may be challenging but there can be improvements and PMSA is committed to continue discussions of potential options.

Mr. Jacob presented an example of how rate setting reform was successful in the State of Washington, which moved the rate setting processes away from the Board of Pilotage

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Commissioners. He noted that this change was a recommendation from a comprehensive report issued by the Washington State Joint Transportation Committee in 2018, which addressed several topics in state pilotage.

Mr. Jacob added that the Legislature currently provides a check and balance on the recommendation, and if they were removed, there needs to be an independent control process based on expertise. He commented that the role of the public member is to be a good steward of the process, making sure that the Board is not acting based on biases, conflict of interests, or prejudice. The Board currently is made up of mostly non-public members, which is common in other areas.

Mr. Jacob commented that it is possible to use a tariff, adopted by a port, which is how the pilots in Los Angeles and Long Beach operate without state licensed pilots, however this method is a challenge to establish. If the Board were to reform its system, some items to address are: does the staff have the ability to do the work; are there certified public accountants available for fiscal analysis; and is there a cohort of Administrative Law Judges available to hold the scheduled meetings.

Mr. Jacob commented that he feels that when the Board becomes involved with rates, it loses its credibility for its core mission of pilot safety and licensing.

Mr. Jacob responded to Commissioner Prada that the current process can work and that parties will push the recommendation in a more politicized direction, whether that be more in favor of the pilots or industry, and this will happen independent from the Board. However, it is helpful when the recommendation is nonpoliticized when brought to the Legislature.

Committee Chair Carr responded to Commissioner Prada that whether or not the pilot's pension should be included as a component of the rate setting process can be added to the agenda for discussion at the next Committee meeting.

Commissioner Tynan suggests that the Committee members need more time to review the available information prior to making a recommendation, and she anticipates that the Committee will have a recommendation to present to the Board by September or October 2021. Committee Chair Carr agrees that September or October 2021 is a reasonable deadline, and that the Committee needs to time to review the meeting documents thoroughly prior to adding specific details to the recommendation.

Commissioner Nyborg noted that there is some agreement that the current system is broken and is encouraged that there is enough consensus to bring a recommendation to the Legislature soon. He also noted that the incremental increases sound like a cost-of-living-

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adjustment (COLA) and that the Committee may need to consider this suggestion. Overall, he is pleased to hear of some progress.

Executive Director Garfinkle noted that agenda item 4 is appropriate and does not require much revisions to it. He also noted that it is beneficial that the Committee does not limit itself by listing suggestions. He also added that the Commissioners can talk with each other, but to avoid serial discussions that might violate the Open Meeting Act, and to bring any suggestions to Board staff. Board Counsel Eagan suggested adding an agenda item to discuss the newer historical information would be helpful.

**5. Public comment on matters not on the agenda.**

There were no public comments.

**6. Schedule the next Committee meeting, and proposals for the next Committee meeting agenda.**

Committee Chair Carr requests that agenda item 4 remain on the agenda for the next Committee meeting and inquired if an in-person meeting would be possible for the next Committee meeting. Executive Director Garfinkle reported that he has no update about permitting in-person meetings at the current stage in the pandemic. Commissioner Tynan reported that in two days, Cal/OSHA will be voting on workplace safety issues and are expected to discuss in-person meetings.

The Committee agreed that the Committee will next meet during the afternoon on June 8, 2021.

**7. Adjournment.**

**MOTION:** Commissioner Prada moved to adjourn the meeting. Commissioner Tynan seconded the motion.

**VOTE:** YES: Carr, Prada, and Tynan.

NO: None.

ABSTAIN: None.

**ACTION:** The motion was approved, and the meeting was adjourned at 11:48 a.m.

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Submitted by:



**Allen Garfinkle**  
**Executive Director**

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